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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,941	09/05/2003	Michael Lebner	0156-2003US02	7019

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EXAMINER

LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/655,941

Applicant(s)

LEBNER, MICHAEL

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 42-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-45 and 47-52 is/are rejected.
- 7) ☐ Claim(s) 46 and 53 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/5/2003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: Detailed Action.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The preliminary amendment filed on 9/15/03 has been received and made of record in the application file wrapper. As requested, claims 1-41 have been canceled and claims 42-53 have been added.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 9/15/03 has been received and made of record in the application file wrapper. Note the acknowledged form PTO-1449 enclosed herewith.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 42-44 and 47-52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,263,970 ("Prellar").

As regards claim 42, Prellar discloses the instant invention as presently claimed. More specifically, Prellar discloses a method for closing a wound or incision comprising the steps of: providing a bandage (dressing 10) for closing said wound or incision, the

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bandage comprising: a first component (12) having adhesive (18) on a lower surface and a plurality of first elongated connectors (24.1) extending from one edge thereof in a first direction, ii) a second component (14) having adhesive (18) on a lower surface and at least one elongated connector (16.1) extending from one edge thereof in a second direction generally opposite to said first direction; attaching said lower surface of said first component to a patient's skin along a first side of said wound or incision; attaching said lower surface of said second component to the patient's skin along a second side of said wound or incision; aligning the edges of the first and second components in a direction parallel to their edges and closing the wound or incision; fixing the first and second components relative to one another by attaching said first elongated connectors to said second component; and attaching said at least one second elongated connector to said first component (Figs. 3-5, Abstract, and col. 2, lines 47-65).

As regards claim 43, the elongated connectors are sufficiently spaced-apart to facilitate adjustment of the first component relative to the second component for alignment of the edge of the first component with the edge of the second component.

As regards claim 44, Prellar further discloses providing a first pulling element (24) joined to said first elongated connectors and a second pulling element (26) joined to said at least one second elongated connector; and pulling on each of said pulling elements to align said first and second components so as to close the wound or incision (Figs. 3 and 4).

As regards claims 48 and 52, Prellar discloses the invention as presently claimed. Note the rejection of claim 42 above. Additionally, the applicant should note

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that the "means for attaching the first elongated connector to the second component and the means for attaching the second elongated connector to the first component reads on adhesive (32). As regards the recitation that the elongated connectors are sufficiently spaced-apart to facilitate adjustment of the first component relative to the second component for alignment of the edge of the first component with the edge of the second component, the connectors and edge of the first and second component are sufficiently spaced-apart to perform this function as evidenced by Figs. 1 and 3-5.

As regards claim 49, as can be see from Fig.1, the first and second elongated connectors are interleavened.

As regards claim 50, as can be seen from Fig. 1, there are two or more elongated connectors extending from one edge of the second component.

As regards claim 51, note pulling elements (24) and (26).

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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6. Claims 42, 44, 45 and 47-51 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4 and 18-20 of U.S. Patent No. 6,329,564 ("Lebner"). Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the presently claimed limitations are disclosed by patented claims 1, 4 and 18-20. The present claims are merely broader in scope than the patented claims. Nevertheless, the more specific patented claims anticipate the broader application claims.

***Allowable Subject Matter***

7. Claims 46 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703.308.0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Kim M. Lewis', is written over a horizontal line.

Kim M. Lewis  
Primary Examiner  
Art Unit 3743

kml  
May 14, 2004